

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : Criminal Number 12-cr-00106-NS-1

v. :

FRIDAY JAMES :

RULE 16(G) OPINION WITNESS STATEMENT

I. INTRODUCTION

Rule 16(G) of the Federal Rules of Criminal Procedures provides that “at the defendant’s request, the government must give to the defendant a written summary of any testimony that the government intends to use under Rules 702, 703 or 705 of the Federal Rules of Evidence during its case-in-chief.” This memorandum provides a summary of the testimony that government anticipates eliciting from Agent Piccione, as well as the basis for his testimony. Government counsel will move Court for an Order which allows Agent Piccione to remain in the courtroom throughout the trial as a summary witness. Further, government counsel will ask the Court to qualify Agent Piccone as the kind of witness who can provide opinion testimony within the meaning of Federal Rule of Evidence 702 and 704.

II. SUMMARY OF ANTICIPATED TESTIMONY

Joseph Piccione, an IRS Revenue Service who has been employed by the IRS for more than 35 years will testify as follows:

1. As a revenue agent, his duties consists of reviewing various types of tax returns for the purpose of insuring that the returns have been prepared in a manner which complies with federal tax law;

2. To maintain his proficiency in federal tax compliance procedures and policies, the agent is required annually to complete various tax related continuing professional educational courses sponsored by the Internal Revenue Service.
3. In reviewing tax returns for compliance, Agent Piccione is tasked with the responsibility of making a determination as to whether a tax deficiency listed or shown on a tax return, or a refund claimed on a tax return, is correct from the standpoint of compliance with federal tax law.
4. The bulk of the returns that Agent Piccione has reviewed in the past have consisted of individual returns. As such, he is familiar with the type of deductions that various tax filers are permitted to take under federal law, more specifically, deductions which are based on IRS Code Section 162.
5. Code Section 162, the agent will testify, deals with deductions for trade or business expenses and is one of the most important provisions in the Code. Thus, if an expense is not deductible, the agent will treat the cost as a non-deductible consumption expense.
6. In determining whether an expense deduction is authorized under Code Section 162, the agent will further testify that he generally tries to ascertain whether the expense for a given trade or business was ordinary and necessary and whether the expense was both incurred and paid, and not reimbursed in any manner.

Respectfully yours,

ZANE DAVID MEMEGER
UNITED STATES ATTORNEY

/Floyd J. Miller

Floyd J. Miller
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the government Rule 16 (G) statement was electronically file with the Clerk of Court and served upon counsel for the defendant this 29th day of August 2012 at the address listed below by United States Mail, postage prepaid:

Gilbert Scutti, Esquire
Attorney & Counselor at Law
31 Station Avenue
Somerdale, New Jersey 08083

/Floyd J. Miller

Floyd J. Miller
Assistant United States Attorney